

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company)	
)	
Petition for confidential treatment for portions)	
of the notice of transfer of generating assets)	
and wholesale marketing business and entry)	
into related agreements pursuant to)	
Section 16-111(g) of the Illinois Public)	
Utilities Act.)	
)	Docket Nos. 00-0369 and 00-0394
Illinois Commerce Commission)	(Consolidated)
vs.)	
Commonwealth Edison Company)	
)	
Notice of transfer of generating assets and)	
wholesale marketing business and entry into)	
related agreements pursuant to)	
Section 16-111(g) of the Illinois Public)	
Utilities Act.)	

REPLY BRIEF OF COMMONWEALTH EDISON COMPANY

Commonwealth Edison Company ("ComEd" or the "Company") submits this Reply Brief in response to the Initial Briefs of the other parties. No party has put forth any valid legal or factual basis for findings adverse to ComEd in this case. To the contrary, the record and the law fully support ComEd's position on the two issues before the Commission, and the Commission should issue an order authorizing the Transfer¹ to proceed.

I. Scope of Relief Requested/Effect of Order

Several of the briefs question what "approvals" the Company is seeking in this case and what the effect of the Commission's order will be. The Company has not sought any approval other than that required by Section 16-111(g), and Section 16-111(g) does not

¹Unless otherwise noted, all abbreviations used in this Reply Brief are the same as those used in the Initial Brief.

distinguish among various aspects of a single transaction with respect to which aspects are "approved" and which are not. Section 16-111(g) establishes a procedure whereby an electric utility gives the Commission notice of its intent to engage in a particular transaction. The Commission may prohibit a transaction which transfers generating assets if, and only if, it finds that there will be adverse reliability and/or base rate effects. The Section expressly provides that the electric utility may proceed with the transaction "without obtaining any approval of the Commission other than that provided for in this subsection and notwithstanding any other provision of this Act or any rule or regulation of the Commission that would require such approval. . . ." 220 ILCS 5/16-111(g)(1999).

Thus, the effect of the Commission's order under Section 16-111(g) is not limited to the two issues (reliability and base rates) that the Commission may address. The General Assembly has established a procedure whereby all aspects of the transaction may be executed once the Commission has entered an order approving the transaction under Section 16-111(g). This is as true with respect to decommissioning trust funds as it is with regard to other aspects of the Transfer. The Company may transfer its decommissioning funds pursuant to this section "notwithstanding" any other provision of the Act. There are no other approvals that the Company must obtain in this regard.

That said, the Company recognizes and accepts that the Commission will retain its authority over prospective decommissioning recovery from ratepayers under ComEd's Rider

31. The Contribution Agreement expressly provides:

[ComEd] will also retain the obligation to recover Decommissioning Cost charges in the manner provided in 220 ILCS 5/9-201.5 and 220 ILCS 5/16-114 and any other applicable laws, regulations or tariffs, including Rider 31 -- Decommissioning Expense Adjustment Clause, *to the extent that the Illinois Commerce Commission approves such collections* and [ComEd] actually collects such charges.

ComEd Ex. 1, App. A, § 6.6 (emphasis added). The Company has already proposed language that affirms the Commission's continuing jurisdiction over decommissioning charges.

The Company also agrees that it may not enter into any agreement that differs in any material respect from the agreements presented to the Commission in this docket. The Company would not object to inclusion of the following provision in the final order in this case:

The Commission's approval is conditioned on ComEd entering into agreements in connection with the Transfer that do not differ in any material respect from the agreements presented in the proceeding.

II. Decommissioning Issues

IIEC proposes the establishment of a third proceeding, in addition to this docket and Docket No. 00-0361,² to address the transfer of the decommissioning trust funds, on the grounds that the trust fund assets recorded on ComEd's books do not constitute "assets" within the meaning of Section 16-111(g).

IIEC's position has no legal or factual foundation. The decommissioning trust funds are ComEd's assets, and it is proper for the transfer of those funds to be presented to the Commission in this proceeding.

A. The Commission May Approve the Transfer of the Decommissioning Funds in this Proceeding

IIEC contends that the Company's 16-111(g) Notice is "defective" because, according to IIEC, the nuclear decommissioning funds are not ComEd's "assets" within the meaning of Section 16-111(g). IIEC requests (Br., p. 10) that the Commission "direct that issues relating to the transfer of the nuclear decommissioning trust funds and the assets in those funds be considered in a separate proceeding."

² The Company initiated Docket No. 00-0361 to address prospective decommissioning cost recovery issues. It would not be appropriate to address the disposition of the existing decommissioning trust funds in that docket.

It should be beyond dispute that the nuclear decommissioning trust fund balances may and should be transferred along with the nuclear plants themselves. The trusts were established pursuant to Section 8-508.1 of the Act to provide a means for assuring the safekeeping of funds received from ratepayers for the purpose of decommissioning the nuclear plants. It follows that where there is a change in responsibility for decommissioning the plants, there should be a transfer of the trusts as well, so that the funds in the trusts may ultimately be put to their intended purpose.

IIEC offers several bases for its view that the decommissioning trust funds are not ComEd's "assets" within the meaning of Section 16-111(g), and therefore may not be considered in a Section 16-111(g) proceeding in which the transfer of the plants is being addressed. IIEC argues, variously, that its position is supported by "black letter" trust law, ComEd's own intent in establishing the trust, Section 16-114.1 of the Act, and IRS regulations. None of these bases is sound.

Section 16-111(g) provides that, subject to the provisions of that subsection, an electric utility may "sell, assign, lease or otherwise transfer assets to an affiliated or unaffiliated entity and as part of such transaction enter into . . . agreements with the transferee." The subsection does not define "assets," nor is there any need to do so. There is no ambiguity as to whether the decommissioning trusts are ComEd assets, and the trust funds are properly reflected in "agreements with the transferee."

The Act itself refers to the decommissioning trusts funds as utility assets. Section 8-508.1(a)(3) defines a "decommissioning trust" as "a fiduciary account in a bank or other institution established to hold the decommissioning funds provided . . . for the eventual purpose of paying decommissioning costs, which shall be separate from *all other accounts and assets of*

the public utility establishing the trust." 220 ILCS 5/8-508.1(a)(3) (emphasis added). Thus, the General Assembly, which also used the term "assets" in Section 16-111(g), understood and intended the decommissioning trusts to be public utility assets, which are to be kept separate and apart from other utility assets. The fact that they are "separate" from other utility assets does not render the decommissioning trusts something other than utility assets.

The Act's treatment of the trust funds as utility assets is consistent with both common use of the term "asset" and accepted accounting practices. A common definition of "assets" is "the entries on a balance sheet showing all properties and claims against others that may be applied, directly or indirectly, to cover liabilities." *American Heritage Dictionary*, 2d Edition. The nuclear decommissioning trust funds fully satisfy that definition. The trust funds are recorded on ComEd's books, as the accounting entries submitted with the Notice show.

ComEd Ex. 1, App. H, p. 5. The assets are reflected there because they are to be applied to cover ComEd's nuclear decommissioning liability. Further, an independent certified accountant has certified that the entries are consistent with generally accepted accounting principles. ComEd Ex. 1, App. I. Accordingly, any conclusion that the nuclear decommissioning trust funds are not ComEd's "assets" would be inconsistent with both the common understanding of the term and GAAP.

IIEC does not address the accounting implications of its position. Rather, IIEC focuses principally on alleged nuances of the law of trusts. In particular, IIEC contends that the trustee holds legal title to the trusts, and that by establishing the trusts, ComEd intended to make someone else the legal owner of the funds. Therefore, IIEC concludes, the funds are not ComEd's assets, and ComEd cannot propose to transfer those assets under Section 16-111(g) of the Act.

IIEC misconstrues the law of trusts as well as the intent of both the General Assembly and ComEd. The intent in establishing the trusts was to assure that the funds collected and invested for decommissioning purposes would in fact be available when the time comes for decommissioning. As noted above, the General Assembly sought to keep decommissioning funds "separate" from other utility assets. The use of trusts accomplishes this by restricting ComEd's use of the funds to proper decommissioning uses, and by protecting the funds from creditors of the Company. See IIEC Cross Ex. 1, §§ 2.2, 2.5. Thus, neither the General Assembly nor ComEd intended to make the trust funds someone else's assets; rather the intent was to limit the use of the funds to covering only those liabilities associated with decommissioning.

If the nuclear decommissioning trust funds are not ComEd's "assets," as IIEC asserts, they must be someone else's assets, and IIEC argues that under the law of trusts, the assets belong to the Trustee ("Trustee"). It is clear from the terms of the trust agreements that the funds are not the Trustees' assets. The Trustees do not have the ability to dispose of the trust funds as they see fit or to terminate the trusts. The specific investment transactions of the trusts are directed by an Investment Manager appointed by ComEd, not the Trustees. In fact, the trust agreements expressly state that, with the exception of the function of providing for the expenses of administering the trusts and other similar ministerial functions, "the Trustee shall not act in its discretion but only at the direction of [the] appointed Investment Manager" with respect to the most important functions of each trust -- investing the trust's funds and managing those funds.

IIEC also argues that, to the extent that ComEd is able to deduct its contributions to a qualified nuclear decommissioning trust fund for federal income tax purposes, such deductions would indicate that the funds are not ComEd's assets. The deductibility of

contributions to qualified trusts does not dictate whether the trust fund is an asset of ComEd. Rather, it indicates only that ComEd has complied with IRS regulations intended to insure that revenues collected for the purpose of covering a future expense of the collector (ComEd) are being properly set aside to cover that future expense.

IIEC also argues that the adoption of Section 16-114.1, which authorized Illinois Power Company to take a variety of decommissioning-related actions in connection with its Clinton sale, including the transfer of its nuclear decommissioning funds to the Clinton buyer, would have been unnecessary if IP's nuclear decommissioning trust funds were considered to be transferable assets under Section 16-111(g). The authorization to transfer the trust funds under Section 16-114.1 does not mean that there was no other means of transferring IP's trusts under the Act. Illinois Power could have sought approval of such a transfer under either Section 7-102 or Section 16-111(g). As part of a legislative resolution of decommissioning issues, IP was allowed to transfer the decommissioning trusts without the need for any specific approval, so long as certain other conditions imposed by the legislature were met. ComEd is not subject to Section 16-114.1, or the other conditions imposed on IP, and, unlike IP, must seek approval of the transfer of nuclear decommissioning trust fund assets, which it has done in this proceeding.

Since the trust fund assets are ComEd's assets for purposes of the Act, the Act requires Commission approval for (or, as elected by ComEd, a notice of) a transfer. In this instance, Sections 7-101 and 7-102, which require approval for, respectively, transactions with affiliated interests and disposition of property, would apply, but for Section 16-111(g). That Section is the efficient and proper means established by the legislature for obtaining approval of asset transfers that would otherwise require approval under Sections 7-101 and/or 7-102.

If IIEC were correct that the trust funds are not ComEd's assets at all, then ComEd would not require any Commission approval under the Act to transfer them. ComEd is not aware of any section of the Act, and IIEC has not identified any, that requires Commission approval to transfer assets not owned by a utility.

What IIEC is trying to do is blaze a middle path between these two alternatives, which are both unacceptable to IIEC. IIEC is arguing that ComEd requires approval under some unidentified section of the Act in order to transfer the decommissioning trusts, and that, nevertheless, while approval is required, it cannot be obtained under Section 16-111(g). To the contrary, the law and the record establish that the trust funds are the Company's assets and it is appropriate both for the Company to transfer those assets pursuant to the terms of the Section 16-111(g) and for the Commission to review that transfer under the test set forth in that Section. Since the transfer of the decommissioning funds will not render ComEd unable to provide its tariffed services in a safe and reliable manner, and will not produce a strong likelihood of the need for a base rate increase, there is no reason to prohibit that transfer. Moreover, the transfer will result in the decommissioning funds being used for the very purpose for which they were established: ComEd is using the full amount of the trust funds to satisfy ComEd's liability for decommissioning, and the funds will be placed in trusts by the new owner of the plants to assure the availability of funds to pay for decommissioning when decommissioning occurs.

B. The Transfer Does Not Violate Section 8-508.1 of the Act

IIEC contends that the distribution of the trust fund balances to ComEd would violate Section 8-508.1 of the Act. Specifically, IIEC asserts that, if the Commission approves the transfer of the nuclear decommissioning trust assets in this proceeding, "the Commission

may be barred from considering refunds" under Section 8-508.1(C)(3)(iii). That subsection provides that:

[When] a public utility sells or otherwise disposes of its direct ownership interest, or any part thereof, in a nuclear plant with respect to which a nuclear decommissioning fund has been established, the assets of the fund shall be distributed to the public utility to the extent of reductions in its liability for future decommissioning after taking into account the liabilities of the public utility for future decommissioning of such nuclear power plant and the liabilities that have been assumed by another entity. The public utility shall, as soon as practicable, provide refunds or credits to its customers representing the full amount of the reductions in its liability for future decommissioning. 220 ILCS 5/8-508.1(C)(3)(iii).

Contrary to IIEC's assertion, nothing ComEd is doing violates Section 8-508.1.

Under the quoted subsection, ratepayers can only be entitled to refunds to the extent that the balance of the trust funds exceeds the utility's liability. The Contribution Agreement fixes ComEd's liability for decommissioning at the sum of: (1) trust fund balances as of the Transfer Date, and (2) all future decommissioning cost collections approved by the Commission,³ and assigns all remaining liability to Exelon Genco. ComEd Ex. 1, App. A, p. 10. Accordingly, the full amount of the trust funds will be used to satisfy ComEd's decommissioning liability. Therefore, the trust fund balances cannot exceed ComEd's liability, and there can be no excess to be refunded to ratepayers.

III. Reliability Issues

Section 16-111(g) allows the Commission to prohibit the Transfer if it would render the Company unable to provide its tariffed services in a safe and reliable manner. As ComEd explained in its Initial Brief (pp. 2-6), the record firmly establishes that the Transfer will not jeopardize the reliability of service in any respect. Two parties contend that the Transfer

³ Under the Contribution Agreement, ComEd remains liable to Exelon Genco by contract for such amounts as the Commission approves and ComEd collects.

must be rejected on reliability grounds. Cook County argues that the Company has failed to demonstrate that it will be able to obtain adequate capacity to serve load and meet its target reserve margin through 2004. By contrast, IIEC does not contest the Company's ability to serve load through 2004. Rather, IIEC argues that the Company has failed to demonstrate that it will be able to obtain adequate capacity to serve load subsequent to 2004.

A. Reply to Cook County

Cook County argues that ComEd has not demonstrated that Exelon Genco will be able to secure sufficient capacity to serve ComEd's load in the future if ComEd retains 100% of the load on its system. Cook County's view is that, because a load resource plan prepared in this docket for Exelon Genco (ComEd Ex. 1, App. K (conf.)) reflects use of new capacity now under construction by third parties in Northern Illinois, and neither Exelon Genco nor ComEd presently has any of the new capacity under contract, the Transfer somehow will render ComEd unable to satisfy future reliability requirements.

The load resource plan shows that, during the study period, if ComEd were to retain 100% of its load -- i.e., not lose any load to alternative suppliers -- the generating resources being transferred to Exelon Genco would be sufficient to serve ComEd's load in all years. [ComEd Ex. 1, App. K (conf.)] The plan also shows that these resources, by themselves, would be sufficient to cover all of a 15% reserve margin in 2001, and to cover portions of such a reserve margin in the other years covered by the plan. Id. The balance of such a reserve margin, under those load assumptions, would be covered by new purchases in the market. Both the Company and the Staff indicated that there would be no problem making such purchases in the future, should they be required. [ComEd Ex. 1, App. E, p. 12; Staff Ex. 3, p. 2; Tr. 131 (Larson)] The amount of new capacity coming on line far exceeds any shortfall between current resources

and a 15% reserve margin under a 100% load retention scenario. [ComEd Ex. 1, App. K (conf.)] Accordingly, the County's concern is unfounded.

There is nothing unusual about relying on new purchases in a load resource plan. The Commission has previously approved a generating plant transaction under Section 16-111(g) in which the transferring utility's resource plan depended on the use of new capacity not under contract. In Docket Nos. 99-0273 and 99-0282 (consol.), the Commission approved ComEd's sale of its fossil units to Edison Mission. In that case, ComEd's future resources included new capacity additions from independent power producers.⁴ [Order, pp. 18-19] The Commission found that ComEd had established that it would be able to reliably provide its tariffed services. Id., p. 40.

Further, Cook County fails to mention that the load resource plan for Exelon Genco is the same load resource plan that ComEd would use if the Transfer were never to occur. [Tr. 68, 74 (McDonald)] As ComEd explained in its Initial Brief (pp. 2-6), the Transfer will not diminish the resources available to serve ComEd. Under Section 16-111(g), the test is whether the Transfer -- the movement of assets from ComEd to Exelon Genco -- *renders* (i.e., causes) ComEd to be unable to provide safe and reliable service. The record establishes, without contradiction, that the Transfer will not diminish ComEd's ability to satisfy future reliability requirements. Id. To the extent that there is a shortfall between current resources and a 15% reserve margin under a 100% load retention scenario, that shortfall exists now, irrespective of the Transfer, and will not be exacerbated, even to the most minute degree, by the Transfer. The Transfer will have no negative impact on reliability.

⁴ ComEd also noted in that case that, if new additions did not materialize, ComEd would build needed capacity itself. ComEd stands by that commitment.

Moreover, Cook County's only criticism of the resource plan -- that it relies on new capacity in the ComEd area which neither ComEd nor Exelon Genco currently has under contract -- is utterly without merit. Cook County does not explain why a current contract for capacity equal to 100% of ComEd's load is necessary, nor could it offer a credible explanation. While no one can predict how much of ComEd's current load ComEd will be serving in a few years, it seems clear that it will not be 100%. It would not be prudent or reasonable for ComEd, Exelon Genco or anyone else to commit now to capacity equal to 100% of ComEd's current load for a period several years down the road. The record reflects no doubt that the capacity will be there. Contracting for it now would simply force a cost structure onto the PPA parties now that may well exceed the price in the future as the market becomes more robust.

For all these reasons, Cook County's position is groundless and should be rejected.

B. Reply To IIEC

IIEC took issue with reliability after 2004. As explained in ComEd's Initial Brief, after the PPA expires, ComEd would obtain its then-required supply from market sources, which could include Exelon Genco. ComEd expects (and Staff witness Larson agreed) that the power supply market at that time will include many more supply options than it does today. [ComEd Ex. 1, App. E, p. 12; App. K; Staff Ex. 3, p. 2, Att. 1; Tr. 131 (Larson)] A substantial amount of new capacity is under construction, and an additional amount has been proposed. [ComEd Ex. 1, App. E, pp. 12-13] While not all of the proposed capacity may come to market, ComEd expects that a significant amount will and that there will be no difficulty procuring replacement supply upon expiration of the PPA. [Id.; Tr. 68-74 (McDonald)] Mr. Larson agreed that, during the Initial Term, ComEd's resources from the PPA, combined with new capacity in ComEd's

territory, is sufficient to provide reliable service. [Staff. Ex. 3, p. 5; Tr. 130-31 (Larson)] He also indicated that, after the PPAs expire, ComEd will be able to maintain system reliability. [Id.; Tr. 131 (Larson)]

IIEC challenged Mr. Larson's assumptions regarding the generation market after 2004. Mr. Larson assumed, quite properly, that generation sufficient to satisfy ComEd's future load requirements would be available based on the level of generation planned today in and around ComEd's service territory and ComEd's import capability. Mr. Larson also assumed that, if that generation failed to materialize, the market would be reregulated; government would simply not accept a power shortage.

Section 16-111(g) does not specify the time period for which an electric utility transferring generation must demonstrate an ability to meet its load requirements reliably. In the four prior proceedings involving generation transfers under Section 16-111(g), the Commission has accepted supply contracts that expire at the end of 2004 as evidence of reliability. Illinois Commerce Comm'n v. Commonwealth Edison Co., Docket Nos. 99-0273 and 99-0282 (consol.) (August 4, 1998); Illinois Commerce Comm'n v. Illinois Power Co., Docket No. 99-0209 (July 8, 1999); Illinois Power Company, Docket Nos. 99-0409, 99-0410, 99-0411 (consol.) (October 26, 1999); Illinois Commerce Comm'n v. Central Ill. Pub. Serv. Co., Docket No. 99-0398 (Oct. 12, 1999). Here, ComEd has presented an even greater assurance of reliability. The PPA with Exelon Genco guarantees ComEd a significant source of supply through 2006, which gives the market even more time to effectuate additional sources of supply.

There are two fundamental reasons why the Commission has not required detailed evidence of supply commitments beyond 2004. First, it is difficult to predict what an electric utility's load will be in a fully unbundled market. It would not be appropriate to require utilities

to commit to contracts now that may require purchases in excess of actual load. Second, it is not unreasonable to assume that new supply options, a great number of which have been announced, will be brought to market by 2005. If demand exceeds supply, it is reasonable to assume that the supply will increase in a deregulated market.

Regardless, as noted above, ComEd has committed that, if new additions necessary to supply ComEd do not materialize, ComEd will build the needed capacity itself. ComEd stands by that commitment.

IV. Effect On Rates

Section 16-111(g) also allows the Commission to reject the Transfer if it would produce a strong likelihood that the Company will qualify for a base rate increase during the mandatory transition period. In its Initial Brief (pp. 7-8), the Company explained why there is no such strong likelihood, and the Staff concurred (Staff Br., pp. 6-9).

The only party to challenge the Company's position in this regard is the City, which argues that, under Section 8-508.1(C)(3)(iii), ComEd will be required to "refund" about \$3 billion to ratepayers when the nuclear plants are transferred to Exelon Genco. The City's position is based solely on an erroneous reading on the statute, and should be rejected.

As noted above in Section II.B. of this Reply Brief, Section 8-508.1(C)(3)(iii) requires a utility to refund, at the time of disposition of a nuclear plant, any excess in the relevant decommissioning trust funds resulting from a reduction in the utility's liability for future decommissioning. The City calculates the reduction in ComEd's liability to be about \$3 billion, and concludes that, accordingly, ComEd will owe ratepayers \$3 billion, which will cause ComEd to qualify for a base rate increase.

The City's argument unfolds this way: the Company's total liability for future decommissioning is about \$5.6 billion, of which about \$2.5 billion has been funded by ratepayer contributions, leaving a shortfall of about \$3.1 billion. Upon the occurrence of the Transfer, Exelon Genco will assume the liability for the \$3.1 billion unfunded portion (less amounts to be collected by ComEd from its ratepayers and paid to Exelon Genco). According to the City, ComEd's liability has been reduced by \$3.1 billion, and ComEd must "refund" \$3.1 billion to ratepayers under Section 8-508.1(c)(3)(iii).

This is not what Section 8-508.1(c)(3)(iii) requires. "Refund" means "to return or give back; to repay." *American Heritage Dictionary, 2d Ed.* ComEd need not (and, linguistically, cannot) "refund" or repay what has never been funded or paid. The \$3.1 billion identified by the City constitutes an amount that ratepayers have never funded, and Section 8-508.1(C)(3)(iii) does not require utilities to repay ratepayers what ratepayers have never paid in the first place.

No other result makes sense. The City is arguing, in essence, that ComEd will have to make a refund that will cause ComEd to require a rate increase to recover the refund. In other words, ComEd will dole out over \$3 billion to ratepayers, then ask the Commission to raise rates to recover from the payees (ratepayers) the same \$3 billion-plus.

Moreover, as discussed above, there is no excess. The full amount of the trust funds will be used to satisfy ComEd's decommissioning liability.

The Commission should reject the City's argument.

V. Requests To Strike Mr. Manshio's Testimony

The City and the AG request that Mr. Manshio's testimony be stricken from the record because in that testimony Mr. Manshio offered his legal opinion regarding various

statutory provisions. The Hearing Examiners' ruling was proper. The Hearing Examiners admitted the testimony, indicating that they would exercise their discretion in giving weight to the testimony in light of its subject matter. There is no prejudice to the City or the AG, and there is no need to revisit the ruling.

VI. The City's Request To Reopen The Record

In its Brief, the City complains that the Hearing Examiners improperly curtailed the City's cross-examination of Staff witness Goldberger. The City asks that the Commission reopen the record to permit the City to complete its inquiry.

The Hearing Examiners' ruling was proper, and the record need not, and should not, be reopened. The City's cross-examination was both irrelevant and beyond the scope of Ms. Goldberger's testimony.

The City sought to cross-examine Ms. Goldberger regarding the City's theory (addressed in Section III, *supra*) that ComEd would have to refund to ratepayers over \$3 billion that it never had collected from ratepayers. The City wished to inquire as to the effect of such a refund on the ROE analyses. The City had tried to ask the Staff witness responsible for development of the Staff's ROE analyses questions, but that witness (understandably) was confused by the questions and could not respond to the City's satisfaction. The City then tried to ask the same questions of Ms. Goldberger, who had not been involved in the review of the ROE analyses.

The Hearing Examiners properly sustained objections to the questions to Ms. Goldberger. A party has no due process right to cross-examine a witness regarding matters outside the scope of her testimony. Moreover, neither the Staff nor any other party has a duty to supply a witness to the City so that the City can develop its story through cross-examination.

The City had the opportunity to submit evidence on direct (which could have included, if presented appropriately, through proper procedure, an adverse witness). The City elected not to do so. Having made that election, the City cannot complain that its due process rights were somehow violated because the Hearing Examiners did not give the City the opportunity to present a direct case through cross-examination of a witness who did not testify on the topic the City sought to address.

For all the reasons set forth herein and in its Initial Brief, Commonwealth Edison Company respectfully requests that the Commission approve the Transfer.

Respectfully submitted,

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